

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT WINTON,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 3:20-cv-103
)	Judge Stephanie L. Haines
SUPERINTENDENT BARRY SMITH, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

This is a civil rights case brought by Robert Winton (“Plaintiff”) relating to alleged abuse he received while incarcerated at State Correctional Institution- Houtzdale (“SCI- Houtzdale”). This matter was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Federal Magistrates Act, 28 U.S. C. § 636, and Local Civil Rule 72.D.

On May 28, 2020, Plaintiff commenced this matter by filing a motion to proceed in forma pauperis attaching his Complaint as an exhibit thereto (ECF No. 1). Plaintiff was granted leave to proceed in forma pauperis and his Complaint was docketed on July 24, 2020 (ECF No. 6). Plaintiff’s Complaint named Superintendent Barry Smith, Deputy Superintendent David Close, Lieutenant Sinclair, and Unit Manager Darren Ginter as Defendants. After screening the Complaint, Magistrate Judge Pesto recommended that the Complaint be dismissed with leave to amend in part (ECF No. 5).

Plaintiff then filed an Amended Complaint on July 29, 2020 (ECF No. 8). In his Amended Complaint, Plaintiff named Unit Manager Darren Ginter, Corrections Officer I Myers, Corrections Officer II John Doe, and Darryl M. Koif as Defendants. After screening the Amended Complaint, on August 11, 2020, Magistrate Judge Pesto recommended that Plaintiff’s Amended Complaint be

dismissed with leave to amend in part (ECF No. 11). On August 18, 2020, Plaintiff filed objections to the Report and Recommendation filed at ECF No. 11 (ECF No. 13) and then filed a Second Amended Complaint on September 8, 2020 (ECF No. 17).


In his Second Amended Complaint, Plaintiff alleges that he was verbally and physically sexually abused by another prisoner on multiple occasions in February, 2019. Plaintiff alleges that named Defendants Unit Manager Ginter and Corrections Officer Myers were aware of the assaults but failed to protect him in violation of his constitutional rights. In his Second Amended Complaint, Plaintiff also states that he informed Defendant Koif, a psychologist, and Defendant Sergeant Reig (initially identified as Defendant John Doe) about the assaults. After screening the Second Amended Complaint, on September 22, 2020, Magistrate Judge Pesto recommended that the Second Amended Complaint should be served on Defendants Ginter and Myers and that the claims against the remaining defendants should be dismissed for failure to state a claim (ECF No. 22). Plaintiff was notified that he had fourteen days to file objections to Magistrate Judge Pesto's Report and Recommendation at ECF No. 22 pursuant to 28 U.S.C. §636 (b)(1). On September 28, 2020, Plaintiff filed a document titled "Praeceptum for Non-Objection to Order, Report and Recommendation dated September 22, 2020" (ECF No. 23). In that document, Plaintiff indicates that he does not wish to object to the Order, Report and Recommendation dated 9/22/20. As such, no party has filed objections and the time to do so has expired.

After a review of the documents of record in this matter and the Report and Recommendation (ECF No. 22) under the "reasoned consideration" standard, *see EEOC V. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (standard of review when no timely and specific objections are filed), the Court will accept in whole the findings and recommendations of Magistrate Judge Pesto in this matter. Magistrate Judge Pesto correctly concluded that, despite

opportunities to do so, Plaintiff failed to make a claim against Defendants Koif and John Doe (now identified as Sergeant Reig). Further, it appears that Plaintiff's Second Amended Complaint adequately alleges a failure to protect claim against Defendants Ginter and Myers.

Accordingly, the following order is entered:

AND NOW, this 29th day of October, 2020, for the reasons set forth in Magistrate Judge Keith A. Pesto's Report and Recommendation (ECF No. 22), which is adopted in whole as the opinion of the Court, it is ORDERED that Plaintiff's claims against Defendants Koif and John Doe are hereby DISMISSED WITH PREJUDICE. The clerk is ordered to terminate this matter as to Defendants Koif and John Doe.

A handwritten signature in cursive script, reading "Stephanie L. Haines", written in black ink over a horizontal line.

Stephanie L. Haines
United States District Judge